

1 L. Scott Keehn
2 Michael V. Pundeff
3 ROBBINS & KEEHN
4 530 "B" Street, Suite 1700
5 San Diego, California 92101
6 (619) 232-1700

7
8
9 Attorneys for Defendant, RDI VIDEO SYSTEMS, INC.

FILED
SUCCESSION DIVISION

FEB 77 4 00 PM '95

SAN DIEGO COUNTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,

COUNTY OF SAN DIEGO

10 MURAKAMI-WOLF-SWENSON,
11 a California corporation,

12 Plaintiff.

13 v.

14 RDI VIDEO SYSTEMS,
15 a California corporation and
16 DOES I through XX, inclusive.

17 Defendants.

Case No. 532481

CROSS-COMPLAINT FOR
BREACH OF CONTRACT AND
CONVERSION

see pd on answer

17 RDI VIDEO SYSTEMS, INC..

18 Cross-Complainant.

19 v.

20 MURAKAMI-WOLF-SWENSON PRODUCTION,
21 LTD. and DOES 1 through 30,
22 Inclusive.

23 Cross-defendants.

24 Cross-complainant RDI VIDEO SYSTEMS, INC. alleges:

25 FIRST CAUSE OF ACTION

26 (Breach of Contract)

27 1. Cross-complainant is and at all times herein mentioned
28 was a corporation duly organized and existing under the laws of

ROBBINS & KEEHN
ATTORNEYS AT LAW

1700 CALIFORNIA FIRST BANK BUILDING
830 - "B" STREET
SAN DIEGO, CALIFORNIA 92101
Telephone (619) 232-1700

3/1/95 2:40 PM
Bul

1 the State of California with its principal place of business in
2 the City of Carlsbad, County of San Diego, California.

3 2. Cross-complainant is informed and believes, and
4 thereon alleges, that cross-defendant MURAKAMI-WOLF-SWENSON
5 PRODUCTION, LTD. is a corporation existing under the laws of the
6 State of California with its principal place of business in the
7 City and County of Los Angeles, California.

8 3. The true names and capacities of cross-defendants sued
9 herein as ROES 1 through 30, inclusive, are unknown to
10 cross-complainant, who therefore sues each of said
11 cross-defendants by such fictitious names. Cross-complainant
12 will amend this cross-complaint to allege their true names and
13 capacities when ascertained. Cross-complainant is informed and
14 believes, and thereon alleges, that the defendants sued herein as
15 ROES 1 through 20, inclusive, are officers and directors of
16 cross-defendant MURAKAMI-WOLF-SWENSON PRODUCTION, LTD. and that
17 each of the fictitiously named cross-defendants is liable in some
18 manner for the occurrences and damages alleged herein.

19 4. Cross-complainant is informed and believes, and
20 thereon alleges, that at all times relevant hereto.
21 cross-defendants, and each of them, were the agents and employees
22 of each of the other cross-defendants, and in doing the acts
23 hereinafter alleged were acting within the course and scope of
24 such agency and with the approval and consent of the other
25 cross-defendants.

26 5. On or about November 28, 1983, in the County of Los
27 Angeles, California, cross-complainant and cross-defendant
28

1 entered into a written Animation Contract agreement (hereinafter
2 "Animation Contract"). A true copy of said contract is attached
3 to the complaint as Exhibit "A" and is hereby incorporated by
4 this reference as though set forth fully herein.

5 6. Cross-complainant has performed all of the conditions.
6 covenants and promises under the Animation Contract to be
7 performed on its part.

8 7. Cross-defendant has breached the Animation Contract.
9 and the implied and express duty of good faith and fair dealing
10 inherent therein, in the following manner:

11 A. By failing to complete all animation design and
12 layout work for each original and additional minute of animated
13 film at cross-complainant's Carlsbad, California facility;

14 B. By failing to preserve and protect the
15 confidentiality of all information concerning the "Thayer's
16 Quest" project by failing to require each agent, employee and
17 contractor used by cross-defendant during its performance under
18 the Animation Contract to sign a Non-Disclosure Agreement in
19 favor of cross-complainant covering such information and by
20 otherwise divulging and allowing persons to have access to the
21 sensitive, confidential and valuable information of
22 cross-complainant.

23 C. By failing and refusing to deliver to
24 cross-complainant all of the "Thayer's Quest" film segments, and
25 all voice, sound and music tracks associated therewith for which
26 cross-complainant has paid cross-defendant.

27 D. By failing to act fairly and in good faith with
28

1 respect to the performance of its obligations under the Animation
2 Contract.

3 8. Cross-complainant is informed and believes, and
4 thereon alleges, that as a proximate result of cross-defendant's
5 breaches of the Animation Contract, the confidential information
6 concerning the "Thayer's Quest" project has been disclosed to
7 others and cross-complainant has been deprived of the competitive
8 advantages and benefits associated therewith and not received the
9 products and services to which it is entitled under the terms of
10 the Animation Contract, all to cross-complainant's damage in the
11 amount of \$500,000, or such other amount as will be proved at
12 trial of this action.

13 9. As a further proximate result of cross-defendant's
14 breaches of the Animation Contract, cross-defendant has incurred
15 substantial costs, expenses and lost profits from sale of the
16 video game which was to incorporate the products and services of
17 cross-defendant. Cross-complainant will move to amend this
18 cross-complaint to allege the exact amount of such when the same
19 has been ascertained.

20 10. As a further proximate result of cross-defendant's
21 breaches of the Animation Contract, cross-complainant has
22 incurred attorney's fees, costs and expenses in an amount which
23 will be proved at the trial of this action.

24 SECOND CAUSE OF ACTION

25 (Conversion)

26 11. Cross-complainant incorporates by this reference
27 paragraphs 1 through 5, inclusive, of the cross-complaint as
28

though set forth fully herein.

12. Under the terms of the Animation Contract, cross-complainant is the sole owner of all right, title and interest to all scripts, story lines, story boards, backgrounds, layout drawings, cel drawings, actual painted cels, pencil tests, animated film, video tape, masters, audio and treatments utilized in the design, preparation and completion of all portions of the "Thayer's Quest" film described in the Animation Contract. Cross-defendant has no right, title or interest in said film or any of its component parts, but pursuant to the terms of the Animation Contract is required to deliver possession of each completed segment of film to cross-complainant upon payment therefor by cross-complainant.

13. Cross-complainant has paid cross-defendant for one 8-minute film segment and one 22-minute film segment for the "Thayer's Quest" video game and by virtue thereof cross-complainant has been, and still is, entitled to the exclusive and immediate possession of said property. Cross-defendant has failed and refused to deliver the property to cross-complainant and has appropriated and converted the same to its own use and possession. Cross-complainant has demanded the delivery of said property, but cross-defendant has failed and refused, and continues to fail and refuse, to deliver the property to cross-complainant.

14. The two film segments converted by cross-defendant have a combined value in excess of \$300,000.

15. As a proximate result of cross-defendant's conversion

1 and failure to deliver the aforementioned film segments.
2 cross-complainant has been deprived of the use and benefit of the
3 film segments, and has incurred substantial costs, expenses and
4 lost profits from sale of the video game which was to incorporate
5 the property converted by cross-defendant. Cross-complainant
6 will move to amend this cross-complaint to allege the exact
7 amount of such damages when ascertained.

8 16. Cross-complainant is informed and believes, and
9 thereon alleges, that the aforementioned acts of cross-defendant
10 MURAKAMI-WOLF-SWENSON PRODUCTION, LTD. were willful, malicious
11 and oppressive and cross-complainant is therefore entitled to,
12 and hereby seeks, punitive and exemplary damages in the amount of
13 \$900,000 against said cross-defendant. Cross-complainant is
14 informed and believes, and thereon alleges that cross-defendants
15 ROES 1 through 10, inclusive, participated in, approved and
16 ratified the willful, malicious and oppressive acts of
17 cross-defendant MURAKAMI-WOLF-SWENSON PRODUCTION, LTD. and
18 cross-complainant is therefore entitled to, and hereby seeks,
19 punitive and exemplary damages in the amount of \$900,000 against
20 each of said cross-defendants, jointly and severally.

21 WHEREFORE cross-complainant prays for judgment against
22 cross-defendants as follows:

23 1. For general and special damages in the sum of
24 \$800,000, or such other amount according to proof at trial;

25 2. For punitive and exemplary damages in the sum of
26 \$900,000;

27 3. For costs, expenses and attorney's fees incurred in
28

1 this action according to proof at trial; and
2 4. For such other relief as the court deems proper.
3

4 Dated: Feb. 27, 1985

ROBBINS & KEEHN

By: 

Michael V. Pundeff
Attorneys for Cross-complainant

ROBBINS & KEEHN
ATTORNEYS AT LAW
1760 CALIFORNIA STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-1700